IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8526 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE K.M.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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SMITA PAUL SHASTRI

Versus

STATE OF GUJARAT

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Appearance:

1. Special Civil Application No. 8526 of 2000

MR Y.N. OZA, SR. COUNSEL WITH MR. NIRZAR S DESAI for Petitioner No. 1

MS. KATHA GAJJAR, AGP, for Respondent No. 1

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CORAM : MR.JUSTICE K.M.MEHTA

Date of decision: 30/08/2001

ORAL JUDGEMENT

Ms. Smita Paul Shastri-petitioner has filed this

petition for a writ of mandamus or writ in the nature of mandamus or any other order or direction quashing and setting aside the orders dated 18.7.2000 and 26.7.2000 placing the petitioner below respondent Nos. 3 and 4 in the seniority list in the cadre of Office Superintendent. By way of amendment the petitioner has also prayed for a writ of mandamus for quashing and setting aside the order dated 21.10.2000 promoting the respondent to the post of Administrative Officer and further to direct the respondents to consider and promote the petitioner to the post of Administrative Officer.

2. The facts giving rise to this petition are as under:

2.1 The petitioner is a lady belonging to general category. She joined service as Clerk-cum-Typist on 19.11.1974 under the respondent Department i.e. Forensic Science Laboratory and subsequently she was promoted to the post of senior Clerk in the year 1983. She was further promoted to the post of Head Clerk in the year 1987.

2.2 It was further submitted that when the petitioner was in the cadre of Head Clerk the seniority list was published on 27.8.1994 for the cadre of Head Clerk and in the said seniority list the petitioner was at serial No. 2 whereas respondent No. 4, K.M. Mehta was at serial No. 6 in the said seniority list and respondent No. 3 Smt. N.V. Mehta did not figure anywhere in the seniority list. The petitioner submitted that the said seniority list was as on 1.1.1993.

2.3 The petitioner states that from the year 1987 to 1997, she served Head Clerk and thereafter on 3.11.1997 the petitioner was promoted to the post of Office Superintendent and at present she is performing her duties under the respondent Department as Office Superintendent.

2.4 It has been submitted in the petition that the petitioner was amongst the senior most persons in the cadre of Head Clerk and she was eligible for further promotion in the cadre of Office Superintendent. She submitted that the requisite experience to get promotion in the cadre of Office Superintendent from Head Clerk is 7 years experience in the cadre of Head Clerk in the Forensic Science Laboratory. However, in the event if such person is not available and if the post is required to be filled in public interest, said experience can be

relaxed and a person having experience for a period of 2/3rd of the said period can be promoted to the post of Office Superintendent. It has been submitted that by the order dated 20.12.1995 and 21.12.1995 the petitioner was given a conditional ad hoc promotion. It was further contended by the petitioner that the petitioner was offered promotion on the post which was meant for Scheduled Caste / Scheduled Tribe, namely, that as soon as Scheduled Caste/Scheduled Tribe employee is available, again the petitioner will have to go back so to that extent the offer of promotion was only in temporary and ad hoc nature.

2.5 As the petitioner had some domestic problem, she requested respondent No. 2 to put her promotion which was ad hoc in abeyance till the academic year of her daughter is over. Accordingly, the authority put her promotion is abeyance. As the petitioner could not accept the conditional promotion, on 13.6.1996 the authority offered promotion to respondent No. 4 who was at that time at serial No. 6 in the said seniority list. It was also specifically stated that respondent No. 4 was promoted purely on temporary and ad hoc basis for a period of one year only.

2.6 Meanwhile, the petitioner had filed one Special Civil Application No. 7526 of 1997 seeking relief from the Court to direct the respondents to give her promotion to the post of Office Superintendent. In that matter this court had passed order on 27.10.1997. It has been further submitted that respondent No. 3 was given promotion to the post of Head Clerk by way of office order dated 21.3.1997. The authority by its order dated 5.4.1997 has given deemed date to respondent No. 3 and was put under cadre of Head Clerk with effect from 30.11.1989. The authority by its order dated 10.6.1999 also granted promotion to respondent No. 3 to the post of Office Superintendent. Thereafter, the authority by its order dated 29.9.1999 gave respondent No. 3 deemed date to the cadre of Office Superintendent with effect from 13.6.1996. By way of amendment the petitioner has also challenged the said order in this behalf.

3. Mr. Y.N. Oza, learned senior counsel with Mr. Nirjar Desai on behalf of the petitioner has pointed out that by communication dated 20.12.1995 the Government has appointed the petitioner as Office Superintendent on condition that if suitable candidate belonging to reserved category is not available the petitioner is to be appointed only on ad hoc in Class II in this behalf.

He has further pointed out the Government Notification dated 15.12.1997 particularly clause 11.B which provides refusal to accept promotion by Government servant. Sub-clause (2) of clause 11.B of the said Notification (Rules) provides that where the government servant has refused to accept the promotion, his case shall not be considered for promotion for a period of one year from the date of refusal of promotion or till next vacancy arises whichever is later provided that the provisions of sub-rules. However, said sub-clauses (1) and (2) shall not apply against ad hoc promotion against short term vacancy is refused by the Government servant. He submitted that the petitioner originally refused promotion only on the ground that the said promotion was ad hoc and she refused promotion only on personal grounds. Therefore, the subsequent orders promoting respondents ignoring the case of the petitioner are illegal and liable to be set aside.

4. On behalf of the respondents Ms. Katha Gajjar, learned A.G.P. appeared. She pointed out affidavit of one K.L. Tabiyar, Under Secretary, Home Department 18.1.2001.

5. In my view, in view of the order dated 20.12.1995 when the promotion was given completely on ad hoc basis, the petitioner was justified in refusing the promotion and rules provide also accordingly.

6. In view of the same, the subsequent promotion to respondent Nos. 3 ignoring the case of the petitioner is illegal and the authorities must consider the case of the petitioner regarding her promotion. In view of the same, the petition is required to be allowed. It may also be stated that when the authorities consider the seniority of the petitioner they will consider the fact that originally the petitioner was offered promotion on ad hoc basis and also on the post which is meant for Scheduled Caste and Scheduled Tribe candidates and therefore the petitioner has refused the promotion. In view of the same, when the authorities consider the seniority of the petitioner that fact will have to be considered and accordingly deemed promotion will be given to the petitioner. It may also be stated that the petitioner has not lost her seniority by mere refusal of ad hoc promotion.

7. The respondent authorities are, therefore, directed to consider the case of the petitioner for giving promotion as she has earlier refused promotion on the ground that it was purely ad hoc promotion. However, she is already in the seniority list from 1994, the

authorities will give deemed promotion to the petitioner in the light of the principles stated in this behalf. It may also be stated that respondent No. 4 is not given promotion till today. Therefore, I am not considering case of respondent No. 4 at this stage. He will be given promotion in due course in accordance with law.

8. I hope and trust that as long time has been elapsed, the authorities will try to give promotion to the petitioner as early as possible in accordance with law.

9. In the result, the petition is allowed with the above observations. No order as to costs. Direct service is permitted. Rule is made absolute to this extent.

(K.M. MEHTA, J)
(pkn)